

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

ROBERT WALL

PETITIONER

VERSUS

CIVIL ACTION NO. 5:08cv234DCB-MTP

BRUCE PEARSON, et al.

RESPONDENTS

ORDER

This cause comes before this Court on petitioner's motion entitled "Notice of Appeal; and Motion for Reconsideration [12]" filed on August 18, 2008. A review of the record establishes that this cause was dismissed with prejudice on August 11, 2008. Therefore, since the motion for reconsideration was received within 10 days of the final judgment being entered, this motion will be construed as a motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.<sup>1</sup>

"A Rule 59(e) motion 'calls into question the correctness of a judgment.'" Templet v. Hydro Chem Inc., 367 F.3d 473, 478 (5<sup>th</sup> Cir. 2004), *cert. denied*, Irvin v. Hydrochem, Inc., 543 U.S. 976 (2004), (quoting In re Transtexas Gas Corp., 303 F.3d 571, 581 (5<sup>th</sup> Cir. 2002)). A motion filed pursuant to Rule 59(e) "serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." Id. at 479 (citing Waltman v. Int'l Paper Co., 875 F.2d 468, 473 (5<sup>th</sup> Cir. 1989))(internal quotations omitted). The United States Court of Appeals for the Fifth Circuit has held, however, that a Rule 59(e) motion "is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." Id. (citing Simon v. United States, 891 F.2d 1154, 1159 (5<sup>th</sup> Cir. 1990)).

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<sup>1</sup>This motion was filed within 10 days of the entry of the judgment as required by Rule 59(e). See Lavespere v. Niagara Machine & Tool Works, 910 F.2d 167, 173 (5<sup>th</sup> Cir. 1990) (When a motion for reconsideration is filed within 10 days of the judgment, it should be treated as a motion to alter or amend under Rule 59(e).).

The petitioner argues in his motion [12] that he has no “adequate remedy” because a civil lawsuit would take years to prosecute. He further states that the “district court clearly erred creating a manifest injustice.” Having reviewed the complaint and the opinion [9] of this court, it is clear that there has been no manifest error of law or fact committed. Additionally, this court finds that the petitioner has failed to present any newly discovered evidence which would change the outcome of this case. Therefore, this motion is hereby **denied**.

SO ORDERED, this the 8<sup>th</sup> day of September , 2008.

s/ David Bramlettee  
UNITED STATES DISTRICT JUDGE